

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Clarksburg**

VICTOR CALLES,

Petitioner,

v.

Civil Action No. 1:21-CV-101
Judge Bailey

WARDEN R.M. WOLFE,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

Presently pending before this Court is petitioner's Motion to Withdraw [Doc. 12], filed September 24, 2021. Therein, petitioner concedes that 28 U.S.C. § 2241 is the "improper method in which to attack [his] erroneous classification as both a gang member and a sex offender." See [Doc. 12 at 1]. Petitioner requests to withdraw his motion and also requests a copy of his original 28 U.S.C. § 2241 motion and an *in forma pauperis* form. See [Id.]. Because it is common practice for prisoners to receive a disfavorable Report and Recommendation and then seek to withdraw their pending § 2241 motion, this Court **DENIES** petitioner's Motion to Withdraw [**Doc. 12**].

Also pending before this Court is the magistrate judge's recommendation that petitioner's § 2241 petition [Doc. 1] be denied and dismissed.

This Court is charged with conducting a *de novo* review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that

Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. **Thomas v. Arn**, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. **United States v. Schronce**, 727 F.2d 91 (4th Cir. 1984), *cert. denied*, 467 U.S. 1208 (1984). No objections have been filed to the magistrate judge's report and recommendation.


A *de novo* review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation [Doc. 10] is **AFFIRMED**, and petitioner's Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 is **DENIED** and **DISMISSED**. This Court further **DIRECTS** the Clerk to enter judgment in favor of the respondent and to **STRIKE** this case from the active docket of this Court.

The Clerk is **DIRECTED** to transmit a copy to petitioner of (1) his original 28 U.S.C. § 2241 motion and (2) an *in forma pauperis* form.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: October 14, 2021.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE